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IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE TERMINATION OF THE PARENTAL RIGHTS OF T.W., I.W., AND D.W.,	)	
CLINTON WALDEN,	)	
Appellant,	)	
vs.	)	No. 26A01-0702-JV-70
GIBSON COUNTY CHILD SERVICES,	)	
Appellee.	)	

APPEAL FROM THE GIBSON CIRCUIT COURT
The Honorable Walter H. Palmer, Judge
Cause No. 26C01-0604-JT-3
26C01-0604-JT-4
26C01-0604-JT-5

June 7, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Clinton Walden appeals the termination of his parental rights to T.W., I.W., and D.W. We affirm.

Issues

Clinton raises three issues, which we restate as:

I. whether the trial court improperly admitted hearsay evidence;

II. whether the trial court's findings of fact are supported by the evidence; and

III. whether there is sufficient evidence to support the termination of his parental rights.

Facts

Clinton was married to Wendy Walden. The couple had three children,[1] T.W., born on July 13, 1998, I.W., born, on September 8, 1999, and D.W., born on January 5, 2003. The couple was not living together, and in January 2005, Wendy's brother, who had been caring for the children, requested that Clinton take custody of them. At that time, Clinton and the three children lived in a two-bedroom trailer with Clinton's

[1] We note that a fourth child died in infancy.

seventeen-year-old second wife,[2] Crystal, and their infant son. On January 28, 2005, concerns about T.W. were reported to the Gibson County Department of Child Services ("DCS").

Melissa Goodpasture, who became the family's case manager, visited the home and observed that it was in disarray. There were trash and cigarette butts all over the area of the trailer and dirty clothes piled "quite high" in the hallway. Tr. p. 10. There was also an infestation of roaches. She also noticed the home was heated with space heaters. Crystal explained that they were going to move, but the plans fell through. Goodpasture arranged for the children to stay with relatives for the weekend so that Clinton and Crystal could clean up the house.

On February 3, 2005, Clinton and Crystal agreed to an informal adjustment. Services were to be provided by Lincoln Hills and Clinton and Crystal would have to maintain a clean and pest-free home and would have to supervise the children at all times.

From February 2005 until May 2005, Gina Hertel of Lincoln Hills worked with the family. During that time she observed that the children were dirty and unkempt and their feet were black from walking inside the house. The children also repeatedly suffered from severe cases of lice—so severe that Clinton opted to shave the children's heads. Hertel also noticed that there were roaches and mouse droppings in the house, that there were electrical cords strung from the front to the back of the trailer because the electricity in the back of the trailer did not work, that the house was heated with space

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[2] It is unclear when, or if, Clinton and Wendy were divorced.

heaters because the gas was turned off, and that there was no working stove or smoke detector. Hertel worked primarily with Crystal because Clinton frequently did not participate. He was angry with the DCS's involvement, not receptive to the services, and "seemed to make light of the issues." Tr. p. 64. Although she occasionally saw some improvement, T.W. frequently went to school dirty and hungry.

On May 3, 2005, Crystal informed Goodpasture that she was moving back to Kentucky with her son and leaving T.W., I.W., and D.W. with Clinton. On May 16, 2005, Hertel and Goodpasture visited the trailer. Clinton was not there, and T.W. was staying with a neighbor until he returned. They heard children inside the trailer. They knocked on the door and no one answered. They eventually woke a woman who was asleep on the couch and "watching" the two younger children. At that time, five-year-old I.W. was changing D.W.'s diaper. She was using a dirty towel because there were no wipes, and she used the last diaper. The children were removed from the home that day, and on June 22, 2005, the DCS filed a petition alleging that they were children in need of services ("CHINS").

They were found to be CHINS, and placed in a foster home. Clinton agreed to participate in services through Lincoln Hills, obtain suitable housing, maintain employment, and notify Goodpasture of any change in address within twenty-four hours.

In June 2005, Clinton was living in his father's auto detailing shop and was arrested for public intoxication. In July 2005, Clinton had been kicked out of the shop and was homeless. In August 2005, Clinton had moved to Bruceville, Indiana, to work in a field picking melons. In September or October of 2005, Clinton was in Nashville,

Tennessee, trying out for the TV show "Nashville Star." During this time, Clinton had very little interaction with Lincoln Hills, the DCS, and the children.

Clinton eventually returned to Indiana and lived with his brother and then with his father and stepmother. It was not until the summer of 2006, that Clinton participated in somewhat regular visitation with the children. During this time, Clinton also failed to maintain steady employment.

On April 24, 2006, the DSC filed a petition to terminate parental rights. On October 26, 2006, a hearing was held on that petition. At the time of the hearing, Clinton had been employed for less than two weeks. Although he indicated that he intended to rent a four-bedroom house and that his father and stepmother would live with them and help with the children, Clinton was still living in his father and stepmother's apartment.

On December 28, 2006, the trial court granted the DCS's petition to terminate Clinton's parental rights.[3] Clinton now appeals.

Analysis

In reviewing the termination of one's parental rights, we will not set aside a trial court's judgment unless it is clearly erroneous. Castro v. State Office of Family & Children, 842 N.E.2d 367, 372 (Ind. Ct. App. 2006), trans. denied. Where, as here, the trial court issues findings and conclusions, we first determine whether the evidence supports the findings, and then we determine whether the findings support the judgment. Id. "'A judgment is clearly erroneous if the findings do not support the trial court's

[3] Wendy's parental rights were also terminated at this time. She is not participating in this appeal.

conclusions or the conclusions do not support the judgment.'" Id. (quoting Bester v. Lake County Office of Family and Children, 839 N.E.2d 143, 147 (Ind. 2005)). When reviewing a termination of parental rights, we neither reweigh the evidence nor judge the credibility of witnesses. Id. Instead, we consider only the evidence and reasonable inferences drawn therefrom that are most favorable to the judgment. Id.

I. Hearsay

Clinton argues that the trial court improperly admitted into evidence DCS reports that contained hearsay statements from third parties. See In re E.T., 808 N.E.2d 639, 645 (Ind. 2004). Assuming that the trial court improperly admitted hearsay statements into evidence, we fail to see how such statements affected Clinton's substantial rights. See Ind. Trial Rule 61 ("The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties."); City of Indianapolis v. Taylor, 707 N.E.2d 1047, 1055 (Ind. Ct. App. 1999) ("However, errors in the admission of evidence, including hearsay, are to be disregarded as harmless unless they affect the substantial rights of a party."), trans. denied.

It appears that the basis for Clinton's argument is the information describing why the DCS became involved with the family.[4] This information, however, did not serve as a basis for terminating Clinton's parental rights. Instead, Goodpasture, Hertel, and other witnesses, including Clinton, testified at the termination hearing as to the conditions in

[4] The DCS contends that the evidence was not hearsay because it "was not offered to proves [sic] the allegations in the complaint, but to explain her reason for initially contacting the Walden family." Appellee's Br. p. 4.

which the children were living and Clinton's failure to comply with the necessary requirements. Clinton has not established that the allegedly erroneous admission of these documents affected his substantial rights.

II. Findings and Conclusions

Clinton also argues that the trial court's order should be reversed because there is no evidence to support part of Finding of Fact 45, which provides:

> There is a reasonable probability that the conditions that resulted in the removal of the children and placement outside of the home of the parents will not be remedied. Further, there is a real element of danger to the mental well-being of these children if termination does not occur.
>
> While the Mother has not visited with these children virtually at all, the Father has, at least on occasion. Evidence reflects that when he did, his interest was not in the children, but in telling them about himself. CASA reports that after visits started again in June 2006, the children began reflecting problems. [T.W.] started getting up in the night, taking food and hiding it. He started going into the foster parents' childrens' [sic] room and stealing. [I.W.] reflected her angst by starting bedwetting again. She resumed sucking her fingers. [D.W.] seems too young to have problems yet. In contrast, in the foster parents' homes, when not exposed to their birth parents, these children are described as well adjusted and thriving.

App. pp. 28-29 (footnote omitted).

Clinton contends that there is no evidence that when he visited with the children he was not interested in them and talked about himself. Although it appears that this portion of the finding is not supported by the evidence, we again fail to see how this error affects Clinton's substantial rights. See T.R. 61. It is undisputed that Clinton had very little visitation with the children until the summer or fall of 2006, shortly before the

termination hearing, and that the visitation negatively impacted the children's progress. Moreover, there is an abundance of evidence of the children's neglect and Clinton's repeated failure to comply with the requirements of the DCS. The trial court's order included forty-nine findings of fact covering more than seven pages. This portion of Finding 45 was by no means a significant contribution to the termination of Clinton's parental rights. Although the trial court erroneously found that Clinton was not interested in the children and talked about himself during visitations, this error does not affect Clinton's substantial rights.

III. Sufficiency of the Evidence

Indiana Code Section 31-35-2-4(b)(2) provides that a CHINS petition must allege that:

> (A) one (1) of the following exists:
>
> > (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;
> >
> > (ii) a court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made; or
> >
> > (iii) after July 1, 1999, the child has been removed from the parent and has been under the supervision of a county office of family and children for at least fifteen (15) months of the most recent twenty-two (22) months;
>
> (B) there is a reasonable probability that:

> (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
>
> (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;
>
> (C) termination is in the best interests of the child; and
>
> (D) there is a satisfactory plan for the care and treatment of the child.

If the trial court finds that the allegations in a petition are true, it shall terminate the parent-child relationship. See Ind. Code § 31-35-2-8(a). The DCS must prove these allegations by clear and convincing evidence. Bester, 839 N.E.2d at 148. "Clear and convincing evidence need not reveal that the continued custody of the parents is wholly inadequate for the child's very survival. Rather, it is sufficient to show by clear and convincing evidence that the child's emotional and physical development are threatened by the respondent parent's custody." Id. (quotations and citations omitted).

Here, the trial court found that the conditions resulting in the placement outside the home will not be remedied and that the continuation of the parent-child relationship posed a threat to the children's wellbeing. See App. p. 29. Because the statute is written in the disjunctive, the trial court need only find either that the conditions will not be remedied or that the continuation of the parent-child relationship poses a threat to the child. In re C.C., 788 N.E.2d 847, 854 (Ind. Ct. App. 2003), trans. denied. Although Clinton does not challenge the finding that the conditions resulting in placement outside the home will not be remedied, we address his argument regarding the evidence

supporting the finding that the continuation of the parent-child relationship posed a threat to the children's well-being.

Clinton argues that there is insufficient evidence that the continuation of the parent-child relationship posed a threat to the children's well-being. Clinton cites In re E.S., 762 N.E.2d 1287, 1292 (Ind. Ct. App. 2002), in which we reversed the termination of parental rights in part because there was not clear and convincing evidence that the continuation of the parent-child relationship posed a threat to E.S.'s well-being. In that case, however, E.S. underwent a myriad of changes at the same time visitation with her mother was terminated by the trial court. Id. at 1292. Thus, it was unclear whether the improvement in her behavior could be attributed to the termination of visitation or the change in foster homes, medication, therapists, and therapy that occurred at approximately the same time. Id.

Although T.W., I.W., and D.W. also underwent a myriad of changes, unlike in E.S., it was only upon renewed visitation with Clinton that their progress began to deteriorate. E.S. is inapposite to the facts of this case. The children's regression upon renewed visitations with Clinton is sufficient evidence that the continuation of the parent-child relationship poses a threat to their well-being.

Clinton also argues that termination is not in the children's best interests. In doing so, he points to evidence that is not the most favorable to the trial court's ruling. On appeal, however, we do not consider this evidence. Castro, 842 N.E.2d at 372. Further, we do not reweigh the evidence or assess witness credibility. Id.

Clinton also goes so far as to argue, "The trial court itself admitted to the Father's cooperation with the DCS by stating the following in it's Finding of Fact #38 'To say he did not participate in DCS's attempts to help his family would be a gross understatement.'" Appellant's Br. p. 11. A complete reading of this finding simply does not support Clinton's assertion. Finding of Fact 38 provides:

> Clinton Walden has participated only minimally with DCS reunification services. Actually his efforts seemed to be more directed at allowing his then wife Crystal to take care of the problem while he denigrated the whole matter. To say he did not participate in DCS's attempts to help his family would be a gross understatement.

App. p. 27. This argument fails.

Further, Goodpasture testified that since the children were placed outside the home, they have not gone to school hungry or dirty, they are receiving regular medical care, they are happier, and doing "exceptionally well" in their adjustment to their new school. Tr. p. 46. There is sufficient evidence that termination is in the children's best interests.

Conclusion

Any error in the admission of hearsay evidence and in Finding 45 does not affect Clinton's substantial rights. There is sufficient evidence to support the termination of Clinton's parental rights. We affirm.

Affirmed.

NAJAM, J., and RILEY, J., concur.